

STATE OF MICHIGAN
COURT OF APPEALS

CYNTHIA J. WINKLER,

Plaintiff-Appellant,

v

WILLIAM L. CAREY,

Defendant-Appellee.

UNPUBLISHED
December 1, 2005

No. 255193
Roscommon Circuit Court
LC No. 03-723731-NM

Before: O’Connell, P.J., and Sawyer and Murphy, JJ.

O’CONNELL, P.J. (*dissenting*).

Plaintiff paid defendant to draft a binding antenuptial agreement, and the agreement later failed because it lacked a basic and fundamental component. Therefore, I dissent.

The record reflects that defendant devoted a relatively small portion of his practice to family law, so it is not too surprising to discover that he left the tailoring of a boilerplate antenuptial to his client and his secretary. Viewing the facts in plaintiff’s favor, she planned to marry her boyfriend in a trip to Las Vegas, so she called defendant for an antenuptial agreement. Defendant had just finished representing her in an extensive divorce proceeding that focused on the controversial division of the couple’s real properties and other valuable assets. At the time, she out-earned her boyfriend, who worked at Wal-Mart, and she had come through her divorce with a commercial property, several businesses, rental properties, and her own home. Plaintiff did not want another property-division battle if this, her fifth marriage, ended in divorce, so her concerns were realistic and understandable.

Because defendant represented plaintiff in the divorce, he had ample information about her current assets. Nevertheless, he responded to plaintiff’s concerns by asking his secretary to pull an old agreement off the computer and telling her to change the names where relevant. He left the task of documenting the couples’ assets to plaintiff, and he did not review the lists after they were compiled. The hopelessly flawed lists eventually doomed the entire agreement. Now defendant claims that his lack of involvement with the lists relieves him from liability. However, plaintiff hired defendant to draft a valid agreement, not an incomplete one. Plaintiff presented ample evidence showing that the agreement was not drafted and executed in conformity with the standard of care, primarily because of its incomplete disclosure and the lack of legal representation for plaintiff’s future husband. Defendant did not review the lists for legal adequacy before the marriage and provided little, if any, guidance on how the lists must be compiled.

Attorneys are legal professionals who are hired to forge binding agreements and are best equipped to detect any fatal flaws. Just as a doctor may not provide a patient with plaster and gauze and expect the patient to set and encase her own broken leg, an attorney may not leave the most legally sensitive portion of a contract to a client's drafting skill and expect that it will survive judicial scrutiny. If a contract fails because of a flaw related to the attorney's abandonment of the drafting process, we should hold the attorney responsible. In this case, plaintiff presented a material question of fact whether the agreement failed because defendant negligently handled the legal task he accepted. MCR 2.116(C)(10). Therefore, the factually sensitive issue of causation should go to a jury, *Teodorescu v Bushnell, Gage, Reizen & Byington (On Remand)*, 201 Mich App 260, 266; 506 NW2d 275 (1993), and I would reverse.

/s/ Peter D. O'Connell